Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-1579

REV. DIANNE FENNELL,

Appellant,

vs.

ROSALIE BUTLER, Councilwoman; DONALD D. WOZNIAK; HARRIET LANSING, City Attorney; PHILIP B. BRYNE, Deputy City Attorney; JAMES M. CAMPBELL; and the MINNESOTA STATE BOARD OF MEDICAL EXAMINERS,

Appellees.

APPELLANT'T MOTION TO DISMISS APPELLEE'S (THE MINNESOTA STATE BOARD OF MEDICAL EXAMINERS) MOTION TO DISMISS OR AFFIRM DATED MAY 1978

Rev. Dianne Fennell
Attorney Pro Se
Appellant -Petitioner
1612 Randolph Avenue
St. Paul, Minnesota 55105

June 1978

INDEX

JURISDICTION ---------- 1

CONSTITUTIONAL PROVISIONS

U.S. AMEND. 5th. & 14th. -------- 1
MINN. STATE CONST. ART. I,
II, 7&8 ---------- 1
42 s 2000 et seq. (1964 Fed.
Civil Rights Act) ---------- 1&7
St. Paul City Ordinance
No. 16321 Amended ---------- 4&5

STATUTORY PROVISIONS INCLUDED
& INVOLVED MINN. STATUTES
ANNOTATED 147.171, eff. JULY
1, 1976 ---------- 2&5

M.S.A 8.01 ---------- 3
M.S.A 8.02 ---------- 3

CASES

RE LORD, 1959, 255 Minn.
370, 97 N.W. 2d. 287 ----------4&5

DUNN V. SCHMIDT, 60 N.W. 2d 14 --5
239 Minn. 559

SLEZAK V. OUSDIGIAN 110 N.W. 2d--5
1, 260 Minn. 303

UNITED STATES V. SHIPP, --------- 6
203 U.S. 563, 27 S. Ct. 165, 51 L.
Ed. 319, 8 Ann. Cas. 265

MCCALL V. SHAPIRO---------- 6
C.A. CONN. 1969, 416 F. 2d 246

RICCIOTTI V WARWICK SCHOOL
COMMITTEE D.C.R.I. 1970, -------- 6
319 F. Supp. 1006

NAACP V. ALLWN---------- 7
493 F. 2d at 621 (1964)

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NO.

REVEREND DIANNE FENNELL,

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ROSALIE BUTLER, Councilwoman,
DONALD D. WOZNIAK, HARRIET
LANSING, City Attorney, PHILIP
B. BRYNE, Deputy City Attorney,
JAMES M. CAMPBELL, and the
MINNESOTA STATE BOARD OF
MEDICAL EXAMINERS,

Respondent.

APPELLANT'S MOTION TO DISMISS APPELLEE'S
(THE MINNESOTA STATE BOARD OF MEDICAL EXAMINERS)
MOTION TO DISMISS OR AFIRM DATED MAY 1978

TO THE HONORABLE, THE CHIEF JUSTICE AND
THE ASSOCIATE JUSTICES OF THIS COURT:

JURISDICTION

This is a civil action seeking Decaratory Judgement, and Damages because of deprivation under color of state law, statue, regulation, city ordinance, custom of usage, rights, privileges and immunities secured under the Minnesota State Constitution and United States Constitution. The jurisdiction of this Court is involked pursuant to Title 28 of U.S. Code Sections 2201 and 2202; 1331, 1343 (1-4); Title 42 of the U.S. Code Sections 1981 thru 1995. Title 42 § 2000 et seq.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendments V and XIV Amendments to the Federal Constitution and laws of the statue of Minnesota. Title 28 U.S.C. § 2201-2202; 1331, 1343 (1-4), Title 42 U.S.C. § 1981-1995 and 42 § 2000 et seq. and M.S.A. 147.171, Session Laws 1976, c. 222, § 42 effective July 1, 1976.

MEMORANDUM

Comes now Rev. Dianne Fennell, Petitioner, in the above entitled action and in her Counter Motion moves this Court to Dismiss the Motion to Dismiss or Affirm by one of Appellees, the Minnesota State Board of Medical Examiners, because the jurisdiction lies with the Federal Court's on a Federal Civil Rights and a Federal Constitutional issue and essentially it is whether this Court can compell a state attorney general to obey a state law which is sound and hasn't been attacked on any constitutional point if it has--Counsel (Holley), for Appellees hasn't made the chargewho happens to be on very thin ice. Since Robert T. Holley, Special Assistant Attorney General to the Minnesota State Attorney General, Warrern Spannus, has in open Court stated that he and his office refuses to obey Minn. Statutes Annotated 147.171 (1976)c.222 , and issue a permanent massage license to Rev. Fennell, Appellant, pursuant to her nurmerous request, even though when questioned by (Alsop-J), he Holley, could not come up with any reason whatsoever for failor to comply. [1]

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1 see transcript of hearing dtd. 11-18-77 as, 54

On Nov. 18, 1977, appellant had moved the District Court for an Order to Compell this defendant to issue a state license to her, but without any reason why Holley, wouldn't comply, (Alsop-J) found that he wouldn't compell him to comply even though Holley stood in court with out explaination and dumbfounded.

Minnesota Statutes Annotated 8.01 requires:

> "The attorney general shall appear for the state in all causes in the Supreme and Federal Courts where in the state is directely interested; also in all civil causes of like nature in all other courts of the state * * *."

and he may hire employees etc., M.S.A.8.02

> "The attorney general may appoint, and at his pleasure remove, three deputy attorneys general and 12 assistant attorneys general, who who shall aid as he may require of them in the discharge of his officeial duty."
>
> " * * * and each of such assistants shall, * * * have authority to appear * * * in any court of this state, as the attorney general himself might do."
>
> " * * * such assistant, (for) the proconduct of its legal business."

Futher, "Although the attorney general is a part of the executive branch of goverment, as an attorney he is also an "Officer of the Court", and when he appears in court in a legal matter, he is

acting as an attorney and in no other capacity. In Re Lord, 1959, 255 Minn. 370, 97 N.W. 2d 287.

> " * * * The attorney general, as chief law officer of the state when not restricted or limited by statutory or constitutional provisions. * * *, as he deems necessary for the enforcement of the laws of the state * * * and the legislature may, within its authority to perscribe the functions of the attorney general, confer upon him by statue powers which pertain to the office at Common Law.
>
> It is generally held that the Common-law powers and duties of the attorney general are subject to increase, alternation, or abridgment by the legislature." 7 Am Jur 2d 6,7, & 8.

STATEMENT OF FACTS

With reference to the backgroung of this case, it was commenced on July 25, 1977,by Rev. Fennell, Appellant, as a result of a newly enacted St. Paul, Minnesota, City Ordinance No. 16321, which would require needless qualifications and in effect abolish the occupation of massagist, even though the practice of massage is authorized and duly licensed by the State of Minnesota's State Agency. Rev. Fennell, filed and action in United States District Court

of Minnesota seeking to determine the Constitutionality of the Ordinance No. 16321, because it fails to recognize the supremecy of M.S.A. 147.171, and that the U.S. District Court (Alsop-J), errored when he didn't Order the appellant (Minn. State Board of Medical Examiners), to issue a permanant massage license to Rev. Fennell, who was duly licensed by the State Board of Medical Examiners and their attorney Special Assistant Attorney General Robert T. Holley, the attorney general is possed of extensive common law powers which are inherent in his office Dunn v. Schmidt, 60 N.W. 2d 14, 239 Minn. 559. Slezak v. Ousdigian, 110 N.W. 2d 1, 260 Minn. 303. The Supreme Court has held that in preserving the separation of powers of the three branches of goverment, the governor has no power to clothe the attorney general with immunity from the disciplinary powers of the court when the attorney general appears in court as an attorney. In Re Lord 97 N.W. 2d 287. An attorney general is an "Officier of the court" when he appears in court on a legal matter. It sta-

ted it is " * * * it can hardly be assumed that an attorney in his position could not understand that part of c. 646, which * * *." Similar situation arose in United States v. Shipp, 203 U.S. 563, 27 S. Ct. 165, 51 L. Ed 319, 8 Ann. Cas. 265. McCall v. Shapiro, C.A. Conn. 1969, 416 F. 2d 246. "Federal Court jurisdiction under this section 42 § 1983, providing remedy for deprivation of federal constitutional or statutory rights, privileges or immunities under color of state law is not dependant on either diversity or citizenship or the monetary amount in question." Ricciotti v Warwick School Committee. D.C.R.I. 1970, 319 F. Supp. 1006. "Plaintiff in Civil Rights action need not allege defendants specific intent to deprive plaintiff of his constitutional rights." The Courts functions are to require governmental officials to obey the statutes enacted by the state legislature unless declared utherwise. The above constitutes a direct and willfull violation of appellant's federal constitutional, as well as her federal civil rights, and also, as set forth in

42 U.S.C. § 2000 et seq., this case raises the issue of sex discrimination as practiced by a govermental unit exploiting sex discrimination against an occupational class of citizens composed, for all practicle purposes of women and" * * * Title VII to include state agency with the statute's parameters. Pub. L. No. 92-261, § 2 (1), (3), (5), 86 Stat. 103, amending 42 U.S.C. § 42 2000 e (Supp. 1973), see NAACP v. Allwn, 493 F. 2d at 621 (1974).

CONCLUSIONS

Therefore, Appellant, Rev. Dianne Fennell, moves this Court to grant her Counter Motion to Dismiss Appallee's Motion's and to vacate the District Court's judgement because they are unimpartial and frivolous.

Further, that this Court, grant any and futher relief as necessary and proper.

Dated: June 6, 1978

BY: /s/ Rev. Dianne Fennell

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